

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

TRUSTEES OF THE BRICKLAYERS  
AND ALLIED CRAFTSMEN LOCAL 56  
FRINGE BENEFIT FUND,

Plaintiffs,

V.

COMPLETE MASONRY SOLUTIONS, INC.,  
AN ILLINOIS CORPORATION, AND DOUG  
WINIKATES, INDIVIDUALLY,

Defendants.

Case No. 08 cv 1981

## Judge Dow

Magistrate Judge Cox

**MOTION FOR ORDER OF DEFAULT, AUDIT, AND JUDGMENT SUM  
CERTAIN**

Plaintiffs, by one of their attorneys, DONALD D. SCHWARTZ and ARNOLD and KADJAN, pursuant to F.R.C.P. 55, respectfully request this Honorable Court to enter an Order of Default and Judgment Sum Certain as to liability in favor of Plaintiffs and against Defendant, COMPLETE MASONRY SOLUTIONS, INC., AN ILLINOIS CORPORATION, AND DOUG WINIKATES, INDIVIDUALLY.

In support thereof, Plaintiffs state:

1. This case was filed on April 8, 2008.
2. Defendant was served with Summons and Complaint on May 16, 2008 as shown on the return of service previously filed.
3. In excess of 20 days have expired since Service of Process; however, Defendant has failed to file an answer or otherwise plead.
4. Per the affidavit of Olga Kane, attached as Exhibit A, Defendants have missed installment note payments for months March 2008 to June 2008, resulting in the

remaining note balance of \$8,701.42 to be accelerated to fully due and owing to Plaintiffs. (Exhibits A, B, and C)

5. Per the affidavit of Shane Luedke, attorney for Plaintiffs, a total of \$3,080.00 in legal fees and expenses have been incurred in this suit. (Exhibit D)

**WHEREFORE**, Plaintiffs move this Court to:

1. Enter an Order of Default and Judgment Sum Certain against Defendants.
2. Order Defendant, Complete, to submit its records for an audit for the period January 1, 2007 through to the present.
3. Judgment be entered in the amount \$11,782.42 of against Defendants

Respectfully submitted,

TRUSTEES OF THE BRICKLAYERS  
AND ALLIED CRAFTSMEN LOCAL 56  
FRINGE BENEFIT FUND

By: s/ Shane Luedke  
One of Its Attorneys

DONALD D. SCHWARTZ  
SHANE LUEDKE  
ARNOLD AND KADJAN  
19 W. Jackson Boulevard  
Chicago, Illinois 60604  
(312) 236-0415

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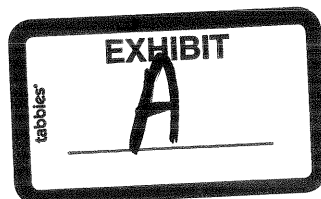
Judge Dow

Magistrate Judge Cox

**AFFIDAVIT**

I Olga Kane, being first duly sworn on oath, depose and state as follows:

1. I am employed at the law firm of Arnold and Kadjan
2. One of my duties is to monitor all contractors paying delinquent fringe benefits on Installment programs.
3. This process includes receiving and accounting for all note payments thereon and computing a running tally of remaining balances for each contractor.
4. Per terms of an Installment Note, attached hereto as Exhibit "B", Defendants, Complete Masonry Solutions and Doug Winikates were due to start and did make payments on October 1, 2007 and were due to continue to pay on the first of every month thereafter until September 31, 2008.
5. A copy of the ledger for the Installment Note that Complete Masonry Solutions and Doug Winikates signed has been making payments pursuant to is attached hereto as Exhibit "C".

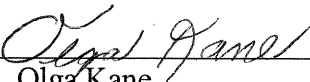


6. As of today, we have not received payments due for on March 1, 2008; April 1, 2008; May1, 2008; and June 1, 2008. As such, the Defendants are currently in default per the terms of the Installment Note.

7. The amount still due according to the ledger balance is \$8,701.42.


8. Affiant is currently not suffering from any infirmities and is competent to testify to the facts set forth herein.

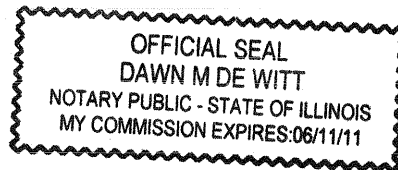
AFFIANT FURTHER SAYETH NAUGHT.

  
\_\_\_\_\_  
Olga Kane

**SUBSCRIBED AND SWORN TO**

before me this 10th day  
of June 2008

  
\_\_\_\_\_  
Notary Public



INSTALLMENT NOTE\$14,916.67August 17, 2007

For Value Received, the undersigned promises to pay to the order of \_\_\_\_\_  
BRICKLAYERS LOCAL #56 PENSION and WELFARE FUNDS the principal sum of  
THIRTEEN THOUSAND FIVE HUNDRED SIXTY and 61/100 (\$13,560.61) DOLLARS

Payable in installments as follows:

ONE THOUSAND TWO HUNDRED FOURTY THREE AND 05/100 (\$1,243.05) Dollars  
 on the 1<sup>ST</sup> day of SEPTEMBER 2007  
ONE THOUSAND TWO HUNDRED FOURTY THREE AND 05/100 (\$1,243.05) Dollars  
 on the 1<sup>ST</sup> day of each month beginning on the 1<sup>ST</sup> day of OCTOBER 2007  
 for 9 month(s) succeeding, and a final payment of \_\_\_\_\_ Dollars  
ONE THOUSAND TWO HUNDRED FOURTY THREE AND 05/100 (\$1,243.05) Dollars  
 on the 1<sup>ST</sup> day AUGUST 2008 with interest on the balance of principal remaining from time to time unpaid at the rate of  
10% per cent per annum, payable on the due dates for installments of principal as aforesaid.

All payments on account of the indebtedness represented by this Note shall be applied first to accrued and unpaid interest and the remainder to principal. Any installments of principal not paid when due shall bear interest after maturity at the rate of 18 per cent per annum. Payments of both principal and interest shall be made at ARNOLD AND KADJAN, 19 WEST JACKSON BOULEVARD, CHICAGO, IL 60604-3958 or such other place as the legal holder hereof may from time to time in writing appoint.

The payment of this Note is secured by a Security Agreement in the nature of a chattel mortgage, bearing even date herewith, from the undersigned to \_\_\_\_\_  
 on personal property \_\_\_\_\_

in the County of \_\_\_\_\_, Illinois. The undersigned's residence (chief place of business) is at \_\_\_\_\_  
 \_\_\_\_\_, Illinois.

At the election of the payee or legal holder hereof and without notice, the principal sum remaining unpaid hereon, together with accrued interest thereon, shall become at once due and payable at the place of payment aforesaid in case of default in the payment, when due, of any installment of principal or interest, or any portion thereof, in accordance with the terms hereof or in case of default as defined in said Security Agreement. In the event of default, the payee or legal holder hereof shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

The undersigned hereby authorizes, irrevocably, any attorney of any court of record to appear for the undersigned in such court, in term time or vacation, at any time after default in the payment of any installment of the principal hereof, and confess judgment without process in favor of the payee or holder of this Note for such amount as may appear to be unpaid thereon, together with reasonable costs of collection including reasonable attorney's fees, and to waive and release all errors which may intervene in any such proceedings, and consent to immediate execution upon such judgment, hereby ratifying and confirming all that said attorney may do by virtue hereof.

If this Note is signed by more than one person or entity, the obligations and authorizations hereunder shall be joint and several.

All parties hereto severally waive presentment for payment, notice of dishonor and protest.

RESOLUTION OF REPORTS FOR MARCH 2007 THROUGH MAY 2007

DOUG WINIKATES, INDIVIDUALLY

COMPLETE MASONRY SOLUTIONS  
P. O. BOX 902  
ISLAND LAKE, ILLINOIS 60042  
815-477-0155 (phone)

The maker of this Note acknowledges the above indebtedness represents fringe benefit contributions and other costs and charges due and owing pursuant to applicable provisions of the Employee Retirement Income and Security Act, 29 U.S.C. 1145.

CAUTION: Consult a lawyer before using or acting under this form. All warranties, including merchantability and fitness, are excluded.

5082-65

EXHIBIT

**B**

tabbies

EVHT

Complete Masonry Sollutions  
P. O. Box 902  
Island Lake, IL 60042  
815-477-0155  
Contact: Doug Winikates

5082-65

Bricklayers Local 56

Donald D. Schwartz

Owe: Principal \$13,560.61 Interest \$1,356.06 Total Due \$14,916.67

For: resolution of reports march 2007 through may 2007

\$14,916.67

DUE DATE	AMT. DUE	DATE REC.	AMT REC'D	CHECK #	BALANCE
10/1/07	\$1,243.05	10/18/07	1,243.05	1862 B	\$13,673.62
11/1/07	\$1,243.05	11/16/07	1,243.05	1913 B	12,430.57
12/1/07	\$1,243.05	12/14/07	1,243.05	2030	11,187.52
1/1/08	\$1,243.05	3/21/08	2,486.10	1815	8,701.42
2/1/08	\$1,243.05				8,701.42
3/1/08	\$1,243.05				8,701.42
4/1/08	\$1,243.05				8,701.42
5/1/08	\$1,243.05				8,701.42
6/1/08	\$1,243.05				8,701.42
7/1/08	\$1,243.05				8,701.42
8/1/08	\$1,243.05				8,701.42
9/1/08	\$1,243.05				8,701.42



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**AFFIDAVIT**

Shane Luedke, upon being first duly sworn, on oath deposes and states:

1. Affiant is the associate in the Law Firm Arnold & Kadjan handling this case.
2. Our firm has spent 11.70 hours in litigation in this matter.
3. Our normal rate is \$185.00-\$250.00 per hour.
4. Our firm charged the Bricklayers Local #56 Funds \$2,730.00 in this matter.
5. Our firm charged \$350.00 for court filing fee.
6. Affiant is not currently suffering any infirmities and is competent to testify to all  
the foregoing

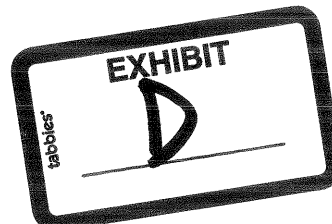
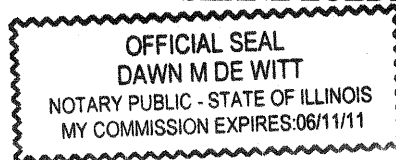
FURTHER AFFIANT SAYETH NOT.

SUBSCRIBED AND SWORN to  
before me this 10th day  
of June 2008



NOTARY PUBLIC

  
SHANE LUEDKE



Shane Luedke  
ARNOLD AND KADJAN  
19 W. Jackson Blvd., Suite 300  
Chicago, IL 60604  
312-236-0415 (phone)  
312-341-0438 (fax)  
Dated: March 26, 2007



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## ORDER

**THIS CAUSE** coming on to be heard on Motion of Plaintiffs for entry of Default and Judgment Sum Certain against Defendant and for an Order requiring Defendant to turn over their books and records for audit; the Court finds as follows:

1. The Complaint was filed herein on April 8, 2008.
2. Process has been served upon Defendants, COMPLETE MASONRY SOLUTIONS, INC., AN ILLINOIS CORPORATION, AND DOUG WINIKATES, INDIVIDUALLY.
3. Defendants have filed no answer or other pleadings within the time provided by law.
4. Defendants are in default on their installment note with the Plaintiffs resulting in the full balance of \$8,701.42 being owed to the Plaintiffs.
5. Plaintiffs have expended \$3,080.00 in legal fees and cost in pursuit of the installment note delinquency.

**IT IS HEREBY ORDERED:**

1. Defendants are hereby defaulted and Judgment as to liability is entered against them and in favor of Plaintiffs.
2. Corporate Defendant, COMPLETE MASONRY SOLUTIONS, INC., is ordered to permit, within 30 days, an audit of his books and records of Plaintiffs' auditor. The audit will cover the period from January 1, 2007 to the present.
3. Corporate Defendant, COMPLETE MASONRY SOLUTIONS, INC., is ordered to produce the following records beginning as of January 1, 2007, for examination by Plaintiffs' auditor.
  - A. All cash disbursements journals;
  - B. All individual payroll records;
  - C. All time records which are the basis of the above-mentioned individual payroll records;
  - D. All State unemployment tax returns as requested by the Trustees;
  - E. All records showing Defendants' employees nature and classification of work, membership of those employees in, or contributions by Defendants on their behalf to, other trades, crafts, or fringe benefit funds.
4. Judgment is rendered against Defendants, COMPLETE MASONRY SOLUTIONS, INC., AN ILLINOIS CORPORATION, AND DOUG WINIKATES, INDIVIDUALLY, in the amount of \$11,782.42 to the Plaintiffs for the delinquent installment note, legal fees, and costs.

This Order is final and appealable as to the delinquent installment note, legal fees, and costs liability but is not as to the remainder of the Order.

DATED: \_\_\_\_\_

ENTER: \_\_\_\_\_  
**HONORABLE JUDGE DOW**

DONALD D. SCHWARTZ  
SHANE LUEDKE  
ARNOLD AND KADJAN  
19 W. Jackson Boulevard  
Chicago, Illinois 60604  
(312) 236-0415